1012.-

SUPREME COURT OF THE UNITED STATES.

No. 85.

JOHN WALKER, APPELLANT,

VERSUS

GEORGE PARKER, AND OTHERS.

APPERL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR WASHINGTON, D. C.

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Langtree & O'Sullivan, Print.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to George Parker, and Ann Sophia, his wife, and James Walker, Joseph Peck, and Sophia, his wife, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the
pursuant to a writ of error *pursuant to writ of error* filed in the clerk's office of the Circuit Court of the United States, for the District of Columbia, in the county of Washington, wherein John Walker is plaintiff in error, and you are defendants in error, to shew cause, if any there be, why judgment rendered against the said John Walker, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. William Cranch, Chief Judge of the circuit court of the District of Columbia, this 15th day of January, 1839.

Service acknowledged.

JOS. H. BRADLEY,
For GEO. PARKER & WIFE.

Style of Court.

DISTRICT OF COLUMBIA, *Sct:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-eighth day of the same month, in the year of our Lord, one thousand eight hundred and thirty-six, and of the Independence of the United States, the sixtieth.

Were present:
The Hon'ble WILLIAM CRANCH, *Chief Judge.*
BUCKNER THRUSTON and JAMES S. MORSELL. } *Ass't Judges.*
ALEXANDER HUNTER, *Marshal.*
WILLIAM BRENT, *Cl'k.*

In the record of the proceedings of the said court, among others, are the following, to wit:

Parties.

JOHN WALKER
vs.
ANN SOPHIA PARKER, and GEORGE PARKER, and JAMES WALKER, JOSEPH PECK, and SOPHIA, his wife.

Be it remembered, that heretofore, to wit, on the 7th day of March, A. D., eighteen hundred and thirty-six, the said complainant, by Brent and Brent, Esquires, his solicitors, filed in court here the following bill of complaint, to wit:

Bill of Complaint.

To the Honorable Judges of the circuit court of the District of Columbia, for Washington county, setting as a court of equity:

Humbly complaining, sheweth unto your honors, your orator, John Walker, of Washington county, in the District of Columbia, that James Walker, late of the county aforesaid, deceased, by his last will and testament, a copy of which is marked A, and filed with and made a part of this bill of complaint, bequeathed to his then wife, Ann Sophia Walker, who, since his death, has intermarried with George Parker, of said county, the one-third of all his estate, personal and real, the third of the real estate during her life; and in the event of the death of said Ann Sophia, all the right in the same bequeathed to her is declared to be vested in the infant son of said testator, named James Walker, whose testamentary guardian is George Cover, which right of said Ann Sophia consists only in her life estate in the said part of said real estate, and which right is also claimed by said minor after his mother's death, to vest a fee simple in her for said third part, the said bequest as aforesaid being made in the commencement of the said last will and testament; that in a subsequent part of said will and testament, the said testator willed and bequeathed other parts of his real estate, in different parts, to other persons in fee simple, and among them to the said minor, and not subjected to said thirds; and that among those to whom the same was given, was your orator, to whom the said testator gave and bequeathed forever a certain lot numbered six (6,) in square one hundred and six, (106,) with the two-story brick house, back buildings, and all appurtenances thereto belonging, and that said testator also gave and bequeathed to his sister, Margaret Peck, lots numbered twenty-one, (21,) twenty-two, (22,) in square one hundred and six, (106,) as her property forever, which said two lots and premises the said Margaret and her husband, Joseph Peck, who your orator prays may be made defendants hereto, sold and conveyed to your orator,

by deed dated the first day of October, in the year eighteen hundred and thirty-five, recorded among the land records of Washington county, a copy of which is marked B, and herewith filed and made a part of this bill of complaint.

It is further stated to your honors, that the said Ann Sophia stood to said will, and has not renounced the same, as will be shewn to your honors, if denied.

Your orator further states, that the said Ann Sophia and her present husband, George Parker, claim and insist upon the right of the said Ann Sophia to the thirds of the said lots and premises bequeathed as aforesaid, in virtue of and under the right which said Ann Sophia derives from said will and testament, and not otherwise, and refuse to permit your orator to dispose of the same, or to do with the same as his own property, and claim and exact the right to receive the third of the rents of the same, as well as to have the right to rent the same, and dispose of it as they please, and harrass and vex your orator in the enjoyment of the same, to the great injury of your orator, and contrary to equity and good conscience.

Your orator further states, that he is advised by counsel learned in the law, and being so advised, he avers and charges that said Ann Sophia and her said husband have no claim or right to said lots and premises, nor has any other person, to your orator's prejudice, under said will and testament; but should your honors be of opinion, notwithstanding said will and testament gives the same, as aforesaid, in fee simple to your orator, that yet the said Ann Sophia has a claim or right to her thirds in the same, (which is denied,) your orator represents and states, that as the said lots and premises now are managed and controlled, great injustice is done to your orator, who cannot receive from them the profits and advantages he is entitled to, nor can he dispose of the same to advantage in any way, and he is desirous to sell some of them and build on others; nor can the said lots and premises be divided, without great injury to all parties concerned, if they can be divided at all.

Your orator further states, that he is anxious and desires to have the entire and exclusive controul of his own property in the premises, to do with as he pleases, without having any connection with the claim of the said Ann Sophia, or any other person, and that he wishes to do with the same as he pleases, which he cannot now do, owing to the pretended claim of said Ann Sophia and her said husband, as well as the pretended claim of said minor, by his guardian, George Cover; your orator therefore says, that justice and good conscience require, that if said Ann Sophia and her husband have any right or claim to the same for her dower, or otherwise, that the same be assigned to her, if it can be done fairly and justly, and without prejudice to your orator; and also that the rights of said minor in the premises may be assigned, and if the same cannot be done, that the said lots and premises may be sold as justice requires, and out of the proceeds that the said Ann Sophia be allowed an equivalent for her interest in the same, (if she has any,) according to the rules in such case made and established.

Your orator further states, that said Ann Sophia and her said husband, and the said minor, by his guardian, George Cover, aforesaid, refuse to do either of the aforesaid things, but insist upon leaving said lots and premises as they now are, and prefer vexing and harrassing your orator, as aforesaid, to his great injury and contrary to equity: in tender consideration whereof, and for as much as your orator is remediless in the premises at and by the strict rules of law, and cannot have adequate relief, save in a court of equity, where matters of this and a like nature are properly cognizable and relievable, your orator therefore prays your honors that the said Ann Sophia, and her husband, George Parker, and the said James Walker, the minor, and his guardian, George Cover, may be made defendants to this bill of complaint, and that your honors do decree that they have no right or claim to any part of said lots and premises under and in virtue of said will and testament: and that she or they, and all those claiming under her or them, in virtue of said last will and testament, may be perpetually enjoined from putting up any claim to any part of said lots and premises, in virtue of said last will and testament, and that your orator may be forever quieted in his enjoyment and possession of the said lots and premises, so far as said Ann Sophia's, and said minor, James Walker's, rights to the same may be derived under said will and testament.

Your orator further prays, should your honors be of the opinion that said Ann Sophia and her said husband, or the said minor, or either of them, are justly entitled to the thirds, or any part of said lots and premises, in any manner or form whatsoever, that then, and in that case, you do decree that the said thirds or part be assigned to the said Ann Sophia during her life, if the same can be done without injustice to your orator's interests, so that your orator may have the entire control of his own part; but if said lots and premises cannot be so divided as to assign said dower or part, if she be entitled to the same, which is denied, your orator prays your honors to decree a sale of the same, out of which said Ann Sophia may be allowed an equivalent for her interest, according to established rules, equity, and good conscience, and that the balance of the proceeds of said sales be adjudged to belong to your orator.

Your orator further prays your honors, that the claim of your orator to said lots, &c., may be decreed to be good against the said defendants; and further, that your honors do order and decree that the said minor, James, who he prays may be made defendant hereto, has no right or claim whatsoever to any part or portion of your orator's aforesaid property; or if your honors be of opinion that he has, that in that case you do order and decree what that claim or interest be, and that the same be set apart, and that your orator may forever be quieted in his rights to said property, as against said minor.

Your orator further states and charges, that there is no person at present duly authorised to rent out said property, or to receive the rents of the same, except it be by the joint act of your orator and the said George Parker, and wife, and that your orator and the said defendants, George Parker and his wife, cannot agree in the pre-

mises, and that it subjects your orator to great vexation and harrassments, and has been the cause of suits relative to such rents, &c.; and they charge that some person ought to be appointed by this Honorable court, to rent and receive the rents and profits of the property aforesaid, and to pay your orator two-thirds of the same, and the said George Parker and his wife the other third, until the further pleasure of your honors be made known in the premises; and to that effect your orator prays your honors to appoint a proper person as said receiver.

Your orator further states and charges, that the said James Walker, the said minor, has no right or claim whatsoever, in law or equity, to the said third part which his said guardian, George Cover, pretends he has, to the said lots and premises, and that his pretended claim does great and manifest injury to your orator, who cannot, in consequence thereof, do with or dispose of said lots and premises as he otherwise could, and to the best advantage; he therefore prays your honors that he may be forever quieted, by a decree of your honors' court, in the enjoyment and possession of said lots and premises, against the said James Walker, or any person claiming under or for him.

Your orator further prays for all other and further relief and decrees in the premises that he may be entitled to, and that your honors may think proper to give and make, to have full justice done in the premises, the same as if such relief and decrees had been specifically asked; and further, that the United States writ of subpœna may issue, directed to the said Anna Sophia, and the said George Parker, and Joseph Peck, and Sophia, his wife, thereby commanding them at a certain day, and under a certain pain therein to be inserted, personally to be and appear before your honors, then and there to answer the premises, and to stand to and abide such orders and decrees therein, as to your honors shall seem agreeable to equity and good conscience, and your orator will ever pray, &c.

BRENT & BRENT,
Sol'rs for Complainant.

WASHINGTON COUNTY—*District of Columbia, to wit:*

Be it remembered, that upon this 7th day of November, 1835, before me, a justice of the peace of the county aforesaid, personally appears John Walker, the aforesaid orator, and makes oath, that the facts stated in his bill of complaint as of his own knowledge, he knows to be true; and so far as derived from the information of others, he believes them to be true.

Sworn before B. K. MORSELL, *J. P.*

Exhibit A.

Exhibit A, referred to in the bill:

In the name of God, Amen. I, James Walker, of the city of

Washington, in the District of Columbia, being sick and weake in body, but of sound mind and memory, thanks be to God, calling unto mind the mortality of my body, and knowing that it is appointed for all men once to die, do make and ordain this my last will and testament, that is to say: principally, and first of all, I give and recommend my soul into the hand of Almighty God, that gave it; and my body I recommend to the earth, to be buried in decent Christian burial, at the discretion of my executors: and touching worldly estate, wherewith it has pleased Almighty God to bless me in this life, I give, devise, and dispose of the same in the following manner and form:

I bequeath and give to my dearly beloved wife, Ann Sophia Walker, one-third of the whole of my personal estate, forever, for her own proper use and benefit; and also one-third of all my real estate, during her life time; and in the event of her death, all the right in real property hereby bequeathed to her shall be, and is hereby declared to be vested in my dear and infant son, James Walker.

I bequeath and give to my dear and affectionate mother, Dorcas Walker, forever, all of lot numbered seven, in square one hundred and six, as laid down in the plan of the city of Washington, together with all the improvements thereon erected, and the appurtenances thereto belonging.

I bequeath and give to my dearly beloved brother, John Walker, forever, all of lot numbered six, in square one hundred and six, with the two-story brick house, back building, and all appurtenances thereto belonging.

I bequeath and give to my dearly beloved brother, Lewis Walker, forever, lots twenty-three, twenty-four, and twenty-five, in square numbered one hundred and six, together with a two-story brick building, with a basement story, back building, and all appurtenances thereto belonging, and erected on one or more of said lots.

I bequeath and give to my dearly beloved brother, Henry Walker, forever, lot numbered six, in square four hundred and three, together with the improvements thereon erected, and appurtenances thereto belonging.

I bequeath and give to my dearly beloved sister, Margaret Peck, lots numbered twenty-one, twenty-two, twenty-six, and twenty-seven, in square numbered one hundred and six, together with a two-story frame house erected on lot number twenty-seven, as her property forever.

I bequeath and give to my dearly beloved sister, Louisa Ballard, forever, lot numbered four, in square numbered four hundred and thirty-two, together with the three-story brick house erected thereon, and all the appurtenances thereto belonging.

I bequeath and give to my dearly beloved sister, Sarah McCallion, part of lot numbered eight, in square numbered seventy-four, together with the frame house erected thereon, as her property forever.

I bequeath and give to my dear and infant son, James Walker, lot numbered twenty-two, in square numbered three hundred and fifty-two, together with two two-story brick houses, and other buildings

thereto belonging, as his property forever. I also bequeath and give to my infant son, James Walker, forever, the balance of my real estate, believed to be and to consist in lots numbered six, eight, and nine, with a house, part brick and part frame, erected on one of said lots, in square one hundred and sixteen; lots thirty-one, thirty-two, and thirty-three, in square numbered one hundred and forty, and a slaughter-house erected on one of said lots; lots numbered eight and eleven, in square numbered two hundred and fifty; and lot numbered twenty-eight, in square numbered one hundred and seven.—And further, I bequeath and give to my infant son, James Walker, one thousand dollars, to be paid out of my personal estate to, and applied, at the discretion of his guardian, hereinafter appointed, for the education of my son, James Walker. The balance of my personal estate, whatever it may be, I desire shall be equally divided between my mother, Dorcas Walker, my sister, Sarah McCallion, and my brothers, Jno., Lewis, and Henry Walker.

And now, in order to execute fully and faithfully this, my last will and testament, I do hereby constitute and appoint George Cover, of the city of Washington, in the District of Columbia, as guardian to my son, Jas. Walker; and in so doing, hereby repose especial confidence in his integrity and faithfulness to the important and solemn duty hereby enjoined upon him.

And lastly, I do hereby constitute and appoint Alexander McIntire, John Gadsby, Senior, and George Cover, all of the city of Washington, in the District of Columbia, as my executors, to execute fully and faithfully this my last will and testament; and in so doing, I hereby declare that I rely upon them as honest, just, and upright men. Amen.

JAMES WALKER. [SEAL.]

Signed, sealed, published, pronounced, and declared by the said James Walker, as his last will and testament, in the presence of us, who, in his presence, and in the presence of each other, have hereunto subscribed our names, at the city of Washington, in the year of our Lord one thousand eight hundred and thirty-two, this seventeenth day of September.

Witnesses, for want of room, have signed on the next page, in the presence of each other, and in the presence of the testator, James Walker. The words "two" in the 27 line erased, and the word "three" above written inserted, and in the same line, the word "twenty" erased, and also the word "thereon or" erased previous to the signing of this instrument, in the 34th line, and the words "sixteenth day of June" on the 3d page erased, and the words "seventeenth day of September" all previous to signing.

Witnesses, R. S. BRISCOE,
WILLIAM WATERS.
LAZARD KERRAND.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

On this 25th day of September, in the year 1832, Richard S. Briscoe, William Waters, and Lazard Kerrand, the three subscribing witnesses to the aforegoing last will and testament of James Walker, late of Washington county aforesaid, deceased, appeared in court, and severally made oath on the Holy Evangels of Almighty God, that they did see the testator therein named, sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of his so doing, he was to the best of their apprehension, of sound and disposing mind, memory, and understanding; and that they respectively subscribed their names as witnesses to this will, in the presence, and at the request of the testator, and in the presence of each other, the several erasures and interlineations therein made, being so done, before the signing the same.

Sworn in open court.

Test: HENRY C. NEALE, *Reg. Wills.*

DISTRICT OF COLMBIA, *Washington County, to wit:*

I certify that the aforegoing is a true copy from the original filed and recorded in my office. Witness my hand and seal of office, this 4th day of March, 1836.

[SEAL.]

HENRY C. NEALE, *Reg. Wills.*

Exhibit B.

EXHIBIT B.

This indenture, made the first day of October, in the year one thousand eight hundred and thirty-five, between Joseph Peck, of Washington county, in the District of Columbia, and Margaret Peck, his wife, (lately called Margaret Walker, Spinster,) of the one part, and John Walker, of the same county, of the other part, witnesseth that in consideration of the sum of five hundred dollars, current money of the United States in hand, paid by the said John Walker to the said Joseph Peck, and Margarette, his wife, before the execution of these presents, the receipt whereof is hereby declared, and the same is hereby acknowledged to be in full for the absolute purchase of the hereditaments hereinafter conveyed, they, the said Joseph Peck, and Margarette, his wife, have, and each of them, hath granted, bargained, sold, aliened, released, and confirmed, and by these presents do, and each of them, doth grant, bargain, sell, alien, release, and confirm unto the said John Walker, his heirs and assigns, all of the two undivided third parts or shares (the whole into three equal parts) being divided, or considered as divided, of, and in, the two lots, or pieces, or parcels of ground, lying and being in the city of Wshington, known on the plat of the said city, by the numbers of twenty-one and twenty-two, in square number one hundred and six, being

part of the property which was devised to the said Margarette Peck, by her late brother, James Walker, deceased, the said lots, one of them being improved, the other unimproved, they sign all estate, right, title, interest, and claim, and demand, whatsoever, of the said Joseph Peck, and Margaret, his wife, both at law, and in equity, therein, and thereto, to hold, and to have the said undivided two-thirds or shares of, and in the said lots of ground, being as hereintofore described, rents, and to the use of the said John Walker, his heirs, and assigns, forever, and to, and for no other purpose, or use, whatsoever, and the said Joseph Peck, for himself, his heirs, executors, and administrators, doth hereby covenant and agree to and with the said John Walker, his heirs, and assigns, that he, the said Joseph Peck, and his heirs, shall and will warrant, and defend the said lots, above conveyed, and every part thereof, unto the said John Walker, his heirs, and assigns, against all persons claiming under them, or either of them, shall and will, from time to time, and at all times, hereafter, make, do, and execute, or cause to be done and executed, all such further acts and deeds whatsoever, as shall be necessary for better conveying said lots unto said John Walker, his heirs, and assigns, and as by him or them shall be required.

In witness whereof, the said Joseph Peck, and Margarette, his wife, have hereunto set their hands and seals, the day and year above written.

JOS. PECK, [SEAL.]
MARGARET PECK, [SEAL.]

Signed, sealed, and delivered in the presence of
CLEMENT T. COOTE,
SAM'L STETTINIUS,

DISTRICT OF COLUMBIA, *Washington County, to wit:*

On this fifth day of October, in the year one thousand eight hundred and thirty-five, Joseh Peck, and Margarette, his wife, appeared personaly before us, the subscribers, two justices of the peace, in and for the county above named, and acknowledged the aforegoing instrument to be theirs, and each of their acts and deed for the purposes therein expressed, and at the same time, but previous to her acknowledgement, the said Margarette being privately examined apart from, and out of the hearing of her said husband, examined by us, whether she made her acknowledgment freely and voluntarily, and without being induced thereto by fear or threats of, or ill usage by her said husband, or through fear of displeasure, acknowledged and declared that she doth make her acknowledgment freely and voluntarily, and without being induced thereto by fear or threats of, or ill usage by her said husband, or through fear of his displeasure.

Taken and certified by and before us.

CLEMENT T. COOTE, *J. P.*
SAM'L STETTINIUS, *J. P.*
W. BRENT, *Clk.*

True copy.
Test:

Appearance of Defendants.

Whereupon, subpœna issued as prayed, returnable to the fourth Monday of March, instant. At which mentioned fourth Monday of March, A. D. 1836, to which said day the said subpœna was made returnable, comes into the circuit court here, the said plaintiff, by his solicitor aforesaid. And the Marshal of the district aforesaid, to whom the said subpœna was directed, makes return thereof to the court here, thus endorsed, to wit: "Summoned all."

A. HUNTER,
Marshal.

Whereupon, the said defendants being so forwarned, appeared in court here, by Joseph H. Bradley, Esquire, their solicitor. And the said cause was regularly continued at rules until the 4th Monday of November next.

Thereupon, the said cause was further continued at rules until the first Monday in April, A. D. 1838, when on motion of the parties, by their solicitors aforesaid, and by order of the court here thereon, the following commission issued to George Naylor, to appoint guardian to take the answer of James Walker, one of the infant defendants.

Commission.

DISTRICT OF COLUMBIA—*County of Washington, to wit:*

THE UNITED STATES OF AMERICA.

To George Naylor.

Whereas, John Walker has exhibited his bill of complaint in the circuit court of the District of Columbia, setting for the county of Washington, as a court of equity, against Ann Sophia Parker, and George Parker, and James Walker, defendants. And it having been represented to the Court, that the said James Walker is an infant and incapable of answering said bill, except by guardian.

Now, know ye, that we have given unto you full power and authority to cause said infant to be brought before you if it may be, and if not, that you go to said infant, and appoint a guardian to said infant, and take his answer by said guardian on his, or her corporal oath, to the said bill of complaint. And when you have so taken said answer, you shall return the same without loss of time to our said court, with a certificate of your proceedings, under your hand and seal, with this commission. Witness W. Cranch, Esquire, chief judge of said court.

Issued this 27th day of May, 1837.

W. BRENT, *Clerk.*

B. & B.

Return of Commission.

To the honorable the judges of the circuit court of the District of Columbia, in Chancery setting:

I, the subscriber, commissioner, named in the within commission, issued in a cause depending in the said court between John Walker, complainant, and Ann Sophia Parker, and George Parker, defendants, do hereby certify, that I caused the said infant defendant named in said commission, to be brought before me, and in virtue thereof, I did assign and appoint George Cover, guardian, for the said infant, and did take the answer of said infant, by his said guardian in writing upon his corporal oath, to the said bill of complaint, which said answer is herewith returned, together with the said commission. Given under my hand and seal, this 27th day of April, 1838.

GEO. NAYLOR, [SEAL.]

Answer of Defendant.

JAMES WALKER inpleaded with GEORGE PARKER and wife, at suit of JOHN WALLER. } In Chancery.

The separate answer of James Walker, infant defendant by George Cover, his guardian, to the bill of complaint of John Walker.

This defendant saving all benefit of exception to the errors, imperfections, and insufficiencies in the said bill contained for answer, nevertheless to such parts as he is advised it is material to make answer unto, saith and admits that James Walker, late of said county deceased, the father of this defendant, made his last will and testament, a true copy of which is filed by the complainant with his said bill marked A, and to which for greater certainty as to the devises and bequests made by said deceased, James Walker, and the order in which the same are made, this defendant refers. This defendant admits, however, that said James Walker did bequeath in, and by his said will unto his wife, Ann Sophia, (the mother of this defendant, and now Ann Sophia Parker,) one-third of the whole of his personal estate forever, and also one-third of all his real estate during her lifetime; and that in the event of her death, all the right in the said real property thereby bequeathed to his said wife, is by the said will declared to be vested in this defendant. And this defendant admits, that the said testator made certain other devises to the complainant, (and to Margaret Peck,) in the bill named of certain lots in the said bill and will named; and without expressly subjecting the same to the third part thereof given in the previous part of his said will to the said Ann Sophia for her life, and to this defendant after her death, but this defendant is advised, and insists that the same lots so devised to the said complainant (and to said Margeret Peck, are as completely and effectually subjected to such third as if made so expressly in each separate devise; this defendant also

admits, that he denies the right of the said complainant (and of said Margaret Peck,) to the whole of the said lots and premises so devised to them, he avers that they are not respectively entitled under said will to any greater, or other portion or portions, than two undivided third parts thereof; and that the other undivided third part is by said will devised to this defendant's said mother for his life, and to this defendant in fee simple, after her death. This defendant denies all the allegations contained in said bill, that this defendant, or his said guardian, hath harrassed, vexed or interfered with said complainant (or said Margaret Peck) in the enjoyment of said premises. He further avers, that the same cannot be divided, without great injury to all parties concerned, and that it would not be to the benefit or advantage of this defendant to have the some sold, but manifestly to his disadvantage and injury. This defendant is advised, and so believes, that it will be most advantageous to him, that the said premises should be retained, and be enjoyed by his said mother as to her third part therein, and by said complainant as to his two-third parts therein during the lifetime of this defendant's said mother. And he refuses to consent to any such sale. That so far as the said complainant seeks to controvert the right of this defendant's said mother, to one undivided third part of said premises for her life, and of this defendant to the same in fee simple in remainder after her death, he saith that complninants remedy is ample at law. And so far as he seeks a sale or partition of said premises, and distribution of the proceeds, defendant denies his right to the same; and for these and other causes he prays that he may be allowed to have the benefit of this answer as a demurrer to said bill, as by the rules and practice of your honorable court is permitted. All which this defendant is ready to maintain and prove, and prays to be hence dismissed with his costs most unjustly sustained. Without this, that, &c.

W. REDIN, *for deft.*

Sworn to by George Cover, guardian of James Walker, this 27th day of April, 1838.

Before me, GEO. NAYLOR.

Whereupon, the said cause was further continued at rules until the fourth Monday of November next. At which mentioned fourth Monday of November, A. D. 1838, George Parker and Sophia his wife, Joseph Peck and Sophia his wife, the other defendants, filed in court here their separate answer, to wit:

Answer of Parker and Wife.

GEORGE PARKER and ANN SOPHIA his WIFE, impleaded with JAMES WALKER, *adv.* JOHN WALKER. } In Chancery.

The joint and several Answer of George Parker and Ann Sophia his wife, to the Bill of Complaint of John Walker.

These defendants saving and reserving to themselves now and at all times, all and all manner of benefit of exception to the manifold errors, uncertainties, and insufficiencies in the said complainants bill of complaint, contained for answer thereto, or to so much thereof, as they are advised it is material, necessary, or proper for them to answer unto, say:

That true it is, that James Walker, late of the county of Washington, deceased, by his last will and testament, a copy of which is marked A, and filed with the said bill of complaint, bequeathed to his wife (this defendant, Ann Sophia, who has since the death of the said James Walker, intermarried with this other defendant, George Parker) the one-third of all his estate, personal and real, the third of the real estate during her life, and in the event of the death of said Ann Sophia, all the right in the same as bequeathed to her, is declared to be vested in the infant son of the said testator, and of this defendant, Ann Sophia; that the said bequest was made to this defendant, Ann Sophia, in the commencement of said last will and testament, that in a subsequent part of said will and testament, the said testator willed and bequeathed other parts of his real estate in different parts to other persons in fee simple, and did not in such parts expressly subject the same to said thirds, but as these defendants maintain as completely and effectually subjected, as if they had been made so subject in each separate devise: that among those to whom the same was given, were the said John Walker, the complainant, to whom the said testator gave and bequeathed forever, a certain lot, numbered six, (6) in square one hundred and six, (106) with a two-story brick house back building, and all appurtenances thereto belonging, and that said testator also gave and bequeathed to his sister, Margaret Peck, lots numbered twenty-one, (21) twenty two, (22) in square 106, as her property forever. That the said Margaret Peck, and her husband, Joseph Peck, sold and conveyed to the said complainant by deed, dated the first day of October, in the year 1835, recorded among the land records of Washington county, a copy of which is marked B, and filed with the said bill of complaint. "All of the two undivided third parts, or shares (the whole into three square parts being divided or considered as divided) of and in the two lots or pieces or parcels of ground, lying and being in the city of Washington, known on the plat of the said city by the numbers twenty-one, and twenty-two, in square number one hundred and twenty-six," but not the whole of the said lots as is stated in the said bill. True it is, that that this defendant, Ann Sophia, took the devises to her in the said bill in lieu of her dower; and these defendants claim and insist upon the right of the said Ann Sophia to the thirds of the said lots and premises, bequeathed as aforesaid, in virtue of, and under the right which the said Ann Sophia derives from the said will and testament, and not otherwise; and they do refuse to permit the said complainant to dispose of the same, or to do with the same as his own property, and claim and exact the right to receive the third of the rents of the said lots; but it is not true, that they claim any exclusive right to rent or dispose of the said lots as they please, nor is it true, that they

either vex or harrass the said complainant in the enjoyment of his interest therein.

These defendants are advised and maintain, that they have a bona fide vested and indisputable right and claim to the one-third part of the said lots during the lifetime of the said Ann Sophia, but they do not admit or pretend, that that right is to the prejudice of, or at all conflicts with the rightful claims of said complaint.

These defendants also deny, that any injustice is done, or intended by them to said complainant, they have not in any manner, at any time, interfered with, or attempted to prevent the said complainant from receiving all the profits and advantages to which he is legally or equitably entitled by reason of his interest or estate in the said lots, or either of them, nor have they interfered to prevent his disposing of such estate or interest. They admit, that the lots and premises cannot be divided without great injury to all parties concerned, although they certainly can be divided.

These defendants deny the power of this court to decree an assignment to these defendants upon the case made out in the said bill of complaint, of any right or claim which they may have in the said lots and premises as prayed by the said bill of complaint, or to decree a sale thereof, and out of the proceeds of said sale to allow to said Ann Sophia an equivalent for her interest in the same as prayed by the said bill. And these defendants have hitherto, and still do refuse their assent to the sale of their interest in the said lots, or any part thereof; but they deny that they have at any time vexed or harrassed the said complainant. And these defendants as to so much of the said bill as seeks for a division or sale of the said property, for further answer thereto say, that no such division or sale can be effected, or ordered by this court during the infancy of the other defendant, James Walker. And also, that by the said complainant's own showing in the said bill, he is not entitled to any relief, which he specifically seeks in the premises, nevertheless, for the purpose of removing all and every possible ground of complaint on the part of the said complainant; these defendants submit, that your Honors appoint a receiver to manage the said estate during the continuance of the interest of these defendants therein, subject to such future order and direction therein, as your Honors shall from time to time hereafter order and give. And these deny all and all manner of disturbance of, or interference with the rights of the said complainant in the said estate, without that, there is any other matter or thing in the said complainant's bill contained, material or effectual, for the defendants to make answer unto, confessed, or avoided, traversed or denied, is true, to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver and maintain, and pray hence to be dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

JOSEPH H. BRADLEY,
Solicitor for Defendants.

Agreed to be taken as an answer without the affidavit of the defendants.

Answer of Peck.

The separate Answer of Joseph Peck and Margaret his wife to the Bill of Complaint of John Walker.

These respondents answering, admit, that they conveyed to the said John Walker, two undivided third parts or shares (the whole into three equal parts to be divided) of two lots or parcels of ground known on the plats of the city of Washington, as numbers 21 and 22, in square 106, as mentioned in the deed referred to as exhibit B, in this cause. And they submit their rights to the court to be finally disposed of according to right and the rules of equity.

F. S. KEY, *for Defendants.*

Agreed to be taken without oath.

BRENT AND BRENT,
For Complainants.

Rule—Replication.

Whereupon, on motion of the said defendants, by their solicitor aforesaid, and by order of the court here thereon, it was ruled by the said court, that the said complainant enter a general replication to the answers aforesaid of the said defendants, or in default thereof, that the said bill be dismissed.

Thereupon, the said complainant by his solicitor aforesaid, filed in court here, the following replication, to wit:

Replication.

The complainant saving and reserving to himself all and all manner of exceptions, &c., for replication to the answers of said defendants, saith, that he doth and will aver, maintain, and prove his said bill to be true and sufficient in the law to be answered unto by said defendants, and that the answers are very uncertain, evasive, and insufficient in the law to be replied unto by the repliant, without that, &c.

BRENT AND BRENT,
For Complainant.

Cause set for Hearing—Bill dismissed.

Whereupon, with the consent of parties by their solicitors aforesaid, the said cause is set for hearing on the bill, answers, and general replication. And the same having been seen and read by the court, and the parties by their solicitors being heard, and the matter being fully understood, it was ordered by the court, after due consi-